petition from anyone and almost before the ink with which the opinion had been written was dry, granted Carmack's slayer a full and complete pardon. The reason given by the governor for his action was that, in his opinion, the defendant was not guilty; that he had not had a fair and impartial trial; and that he had been convicted contrary to the law and the evidence. In other words, the governor virtually constituted himself judge and jury and, without the record before him, pronounced the defendant innocent and released him. A bitter political enemy of Carmack and a close ally of his murderer, he, least of all, was competent to hold the scales of justice in a case in which the slayer of Carmack was the defendant. We are unable to view the affair in any other light than that of a gross prostitution of the pardoning power. It was more than a mere trifling with justice; it was, as a Tennessee paper described it, a strangling of justice and a nullification of the law which the governor was sworn to support. During the past year complaints have been made in a number of states of jail deliveries through the exercise of executive clemency, though none have been quite so shocking as this. Perhaps such abuses may serve a good purpose in turning public attention to the desirability of reorganizing the pardoning authority and hedging it about with more effective restrictions in the interest of law enforcement and social security. J. W. G.

Signs of Progress.

A Pittsburg lawyer, in sending us a contribution for the advancement of the cause for which the American Institute of Criminal Law and Criminology was founded, remarks that "it is constantly becoming clearer that the criminal law and procedure in our country is badly in need of reform." Confessions like this from leaders of the bar are most refreshing. One of the encouraging signs in the progress of the movement for reform is the active interest which the honest and candid members of the legal profession are beginning to take in the effort to devise a more rational criminal law and procedure. As soon as the sympathy and coöperation of the better class of lawyers shall have been secured, the success of the reform movement will be assured. On another page of the Journal attention is directed to the appointment by the American Bar Association two years ago of a special committee to inquire into the subject of needed reforms in the administration of justice and to suggest and formulate remedies for existing evils. A thorough-going measure for reform of federal procedure was prepared by the com-

mittee and unanimously approved by the association as a whole. This bill is now before Congress and is strongly recommended by President Taft. During the past two years the bar associations of many states have given serious consideration to the subject of procedural reforms, especially in criminal cases, and in a number of instances they have formulated measures which have been enacted into law. In others, special committees are now studying the question and will report their conclusions during the present year. We call attention elsewhere in this issue of the JOURNAL to the recommendations of some of these associations. The editor of the *American Law Review*, in his testimony before the judiciary committee of the national House of Representatives on January 12 of this year, in the hearing on the bill referred to above, stated that an examination which he had recently made of the proceedings of the state bar associations for the past year revealed the fact that in all of them except one the main subject of discussion was the question of reforming their systems of legal procedure and in every one of them, with a single exception, there were one or more papers read by lawyers, all on the same side, advocating reform (Hearings in H. R. 14, 552, p. 31). In a number of states during the past year governors have given the subject of legal reform a leading place in their messages to the Legislature, and in several instances commissions were appointed to investigate and report to the next Legislature. In a number of the larger cities the district attorneys have also been active and in some cases they have introduced important reforms. The local bar associations, especially in the larger cities, like Chicago, New York and San Francisco, have also shown unusual activity. In Chicago, the bar association, the law institute and the civic federation joined hands in the effort to secure a more effective method of selecting juries and a bill for this purpose was prepared and introduced into the Legislature. Several national scientific and civic organizations, such as the American Academy of Political and Social Science, the American Political Science Association and the National Civic Federation have likewise recently given important places on the programs of their annual meetings to a discussion of some of the proposed reforms in the administration of criminal justice. The medical associations everywhere are discussing the abuses of expert testimony and proposing reform. Even the alumni associations of the colleges are turning their attention to the subject. Recently, three hundred graduates of a law school in Chicago, on the occasion of a banquet, pleaded guilty to the indictment charging the bench and

bar with clinging to an antiquated court procedure; adopted resolutions urging reform and appointed a committee to investigate and report. Even more encouraging is the awakening of interest among the courts themselves. In Chicago, for example, the Superior Court and the Circuit Court have appointed committees from their benches to consider and report amendments to the practice act, with a view to simplifying procedure and doing away with archaic rules and useless technicalities. So, in New York, the justices of the Supreme Court of the first department have been grappling with the problem of how to expedite the trial of commercial cases. They have recommended a more simple procedure and other reforms intended to shorten the delays of the law in such cases. What is still more hopeful is the changed attitude some of the courts are beginning to take toward technicality in the decisions of their cases. In the last issue of this JOURNAL we commented on a recent decision of the Supreme Court of Oklahoma, where the court, after refusing to reverse the decision of a trial court on a trifling technicality, declared its intention of doing all in its power to put the jurisprudence of Oklahoma "upon the broad and sure foundation of reason and justice, so that the innocent may find it to be a refuge of defense and protection and the guilty may be convicted." If, said the court, we place our criminal jurisprudence upon a technical basis it will become the luxury of the rich, who are able to hire skilled and resourceful lawyers, while the poor and friendless, who need the strong arm of the law for their defense, will be left without protection. The court went on to declare that it "had no respect for precedents found in the rubbish of Noah's ark and which had outlived their usefulness, if they ever had any." If this is revolution, added the court, then we will continue to be revolutionary. The Supreme Court of Wisconsin has recently taken a similar attitude toward immaterial errors, declaring that many of the technical requirements in regard to the framing of indictments are nothing but "rhetorical rubbish" and have no place in the procedure of a court which is seeking to discover truth and render justice.

In our judgment, such an attitude is not revolutionary, but thoroughly in harmony with common sense and reason and is calculated to increase immensely popular respect for the courts and confidence in our methods of administering justice.

The widespread popular dissatisfaction with our present procedure and its results does not represent the vaporings of theorists or the agitation of demagogues or muck-raking agitators. It is the discontent of intelligent laymen, candid lawyers and thoughtful men

the country over. The outpouring of discussion to which we have been treated recently is not without cause. No such widespread complaint would be possible if there were not well-founded reasons for it. It is evidence of real evils which must be removed or the agitation will continue and spread, confidence in the courts as instrumentalities for administering justice will be impaired and lawlessness will increase beyond its already alarming proportions. J. W. G.

The Prevention of Crime, Not Merely Its Punishment.

The third section of the forthcoming International Prison Congress will devote its discussions to the methods of preventing crime; and the fourth section, since it studies the treatment of neglected children and youth, seeks to deal with the same problem.

The best lawyers have long since recognized the paramount importance of prevention, even where they have failed to work out any program or system for social conduct. Thus Blackstone (Book IV, chap. 18) recognized the significance of prevention when he said: "We are now arriving at the fifth general branch or head, viz., the means of preventing the commission of crimes and misdemeanors. And really it is an honor, and almost a singular one, to our English laws, that they furnish a title of this sort; since preventive justice is, upon every principle, of reason, of humanity, and of sound policy, preferable in all respects to punishing justice; the execution of which, though necessary, and in its consequences a species of mercy to the commonwealth, is always attended with many harsh and disagreeable circumstances."

One would expect from this praise of preventive justice an exhibit of agencies and provisions of corresponding importance; but one is disappointed, for the brief chapter on "the means of preventing offenses" touches merely the question of sureties and recognizance. "This *preventive justice* consists in obliging those persons, whom there is probable ground to suspect of future misbehavior, to stipulate with and to give full assurance to the public, that such offense as is apprehended shall not happen; by finding pledges or securities for keeping the peace, or for their good behavior." This is rather a small contribution to our investigation, though one of real value.

The eminent Belgian jurist, Prof. Adolphe Prins (Science pénale et droit positif, p. 25), praises preventive efforts. "Criminality having social causes we ought to fight with social